Chandka

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 3792 OF 2007
IN
SUIT NO. 157 OF 1976

The Official Liquidator of
W. G. Forge & Allied
Industries Ltd. ..Plaintiff

versus

Centrozap ..Defendant

Mr. Anjal Amin i/b. M/s. B. Amin & Co. for the Plaintiff.

Mr. Salil Shah i/b. M/s. Mulla & Mulla & Craigie Blunt & Caroe for the Defendant.

CORAM : S. A. BOBDE, J.
DATE : 19TH NOVEMBER, 2007.

P.C.

. By this notice of motion the official liquidator seeks an order setting aside the stay of the suit granted by this court on 17.6.1977. By that order, this court stayed the suit pursuant to Section 3 of Foreign Awards (Recognition and Enforcement) Act, 1961. Admittedly, no appeal was preferred against that order which has gained finality.

2. After the Official Liquidator stepped into the shoes of the original plaintiff on 11.7.1996, no active steps were taken by the Official Liquidator in this regard.

3. Thereafter, the Official Liquidator took out a notice of motion No. 2781 of 1991 seeking the very relief, that is again sought in this notice of motion. That motion was dismissed on 29.9.1996 by learned Single Judge of this Court, Variava, J. This court held that the Liquidator is not entitled to claim any higher rights or put himself into a position better than that of the plaintiff and that plaintiff not having invoked arbitration, the Official Liquidator is not entitled to have the stay vacated. Thereafter the stay on the suit was vacated for a limited purpose of deciding the preliminary issue about the tenability of the suit. A learned Single Judge of this Court (Patil, J.) by an order dated 1.8.2001 held that though the suit was maintainable, it is liable to be stayed sine-die.

4. Having regard of these circumstances, I see no reason to consider prayer for vacating the stay

granted by this court, particularly, when such a prayer has been rejected earlier and the decision has been accepted by the parties and has gained finality. In fact the parties have accepted the order of this court staying the suit, without demur on three occasions. There is no merit in this notice of motion, which is hereby dismissed.

(S.A. BOBDE, J.)